

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARC LIBAULT,

Plaintiff,

vs.

MARTHA MAMO, Dr., Individually and in
Their Official Capacities; RAVNEET KAUR,
Ms., Individually and in Their Official
Capacities; ASHA MANE, Ms., Individually
and in Their Official Capacities; INSTITUTE
OF AGRICULTURE AND NATURAL
RESOURCES AT THE UNIVERSITY OF
NEBRASKA-LINCOLN, THE BOARD OF
REGENTS AT THE UNIVERSITY OF
NEBRASKA, and THE OFFICE FOR
INSTITUTIONAL EQUITY AND
COMPLIANCE AT THE UNIVERSITY OF
NEBRASKA-LINCOLN,

Defendants.

4:22CV3096

ORDER STRIKING SUR-REPLY BRIEFS

This case is before the Court on Defendants' February 1, 2023, Motion to Strike, [Filing 38](#), and the *pro se* Plaintiff's February 1, 2023, Motion for Leave to File [Sur-reply] Brief in Support of the Plaintiff's Opposition to the Defendants' Motion to Dismiss, [Filing 39](#). The first Motion is granted, but the second Motion is denied.

Defendants filed their Motion to Dismiss on December 14, 2023. [Filing 30](#). Plaintiff filed his Opposition on December 28, 2023. [Filing 32](#). Defendants then filed their Reply Brief on January 17, 2023, pursuant to an extension granted by the Court. [Filing 36](#); Filing 35. On January 31, 2023, without leave of the Court, Plaintiff filed another document denominated Plaintiff's Reply Brief in Opposition to Defendants' Motion to Dismiss. [Filing 37](#). On February 1, 2023, Defendants filed the Motion to Strike now before the Court asserting that Plaintiff's January 31,

2023, was a sur-reply that is improper because it was not authorized by the Federal Rule of Civil Procedure or the Court's local rules. [Filing 38 at 1](#)–2. On February 1, 2023, Plaintiff belatedly filed a Motion for Leave to File [Sur-reply] Brief in Support of the Plaintiff's Opposition to the Defendants' Motion to Dismiss, [Filing 39](#), which is also now before the Court, and refiled his sur-reply brief, [Filing 40](#), without awaiting leave of the Court.

A motion to strike ordinarily pertains to “an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter” in a “pleading.” [Fed. R. Civ. P. 12\(f\)](#). A brief, however denominated, is not a “pleading.” *See* [Fed. R. Civ. P. 7\(a\)](#). Nevertheless, courts often exercise their authority to strike improper or untimely briefs and otherwise to enforce their local rules. *See, e.g., Davis v. Simon Contractors, Inc.*, No. 8:19-CV-246, 2022 WL 1073996, at *1 (D. Neb. Apr. 8, 2022). Furthermore, “[e]ven pro se litigants must comply with court rules and directives.” *Soliman v. Johanns*, 412 F.3d 920, 922 (8th Cir. 2005). Thus, the Court will consider Defendants' Motion to Strike relating to Plaintiff's allegedly improper sur-reply brief.

There is no provision in either the Federal Rules of Civil Procedure or the Court's local rules expressly authorizing the filing of a sur-reply. NECivR 7.1(c) may permit the filing of a sur-reply but only with leave of the court. Whether to allow a sur-reply is a matter in the court's discretion. *See Postawko v. Missouri Dep't of Corr.*, 910 F.3d 1030, 1037 n.3 (8th Cir. 2018). Plaintiff asserts that his sur-reply is necessary “to correct misinterpretation of the law by Defendants, and to demonstrate the pretextual nature of the Defendants' reasons to mask discrimination and adverse employment actions,” adding that [t]hese misinterpretations and pretexts were numerous in the REPLY BRIEF in support of Defendant's [sic] Motion to Dismiss.” [Filing 38 at 2](#) (emphasis in the original). The Court concludes that there is no reasonable need to depart from the general prohibition on sur-reply briefs in this case, where the applicable rules have

already provided Plaintiff with a full and fair opportunity to respond to Defendants' Motion to Dismiss.

Accordingly,

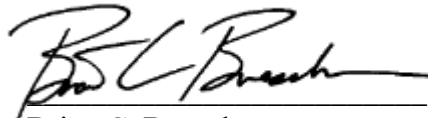
IT IS ORDERED that

1. Defendants' February 1, 2023, Motion to Strike, [Filing 38](#), is granted;
2. Plaintiff's February 1, 2023, Motion for Leave to File [Sur-reply] Brief in Support of the Plaintiff's Opposition to the Defendants' Motion to Dismiss, [Filing 39](#), is denied.

IT IS FURTHER ORDERED that Plaintiff's improperly filed briefs, [Filing 37](#) and [Filing 40](#), are hereby stricken and shall be disregarded in consideration of Defendants' Motion to Dismiss, [Filing 30](#).

Dated this 2nd day of February, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'B. C. Buescher', written over a horizontal line.

Brian C. Buescher
United States District Judge